

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1505, *Morticians*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1505, *Morticians*. The proposed amendments rename the regulation from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The proposed amendments add a new subdivision (a) to include definitions for the terms “funeral director,” “burial,” and “cash advances,” and renumber the regulation’s current subdivisions. The proposed amendments add language to renumbered subdivision (b)(1) and (2) to clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs, and delete the outdated footnote from renumbered subdivision (b)(1). The proposed amendments add a new subdivision (b)(3), which provides an example of how tax applies to the items on a funeral director’s invoice using a current tax rate. The proposed amendments add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” and delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances. The proposed amendments update renumbered subdivision (c)(3) and delete outdated language from renumbered subdivision (c)(3) relating to the specific amount of the veterans’ interment allowance paid by the United States Government. The proposed amendments delete the outdated examples in current subdivision (b)(3). The proposed amendments also make other minor changes for grammar and gender neutrality.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on September 15-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on September 15-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1505.

AUTHORITY

RTC section 7051

REFERENCE

RTC sections 6015 and 6381

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Reg. 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . ." (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The Board adopted Regulation 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505 to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.” Regulation 1505’s provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1505

Need for Clarification

Board staff determined that there were issues with Regulation 1505 because:

- The terminology used in the regulation is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explain the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms “morticians” and “cash advances,” and renumbered the regulation’s current subdivisions. The draft amendments also added “memorial books and digital video discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties' informal suggestions to refine the draft amendments, including a suggestion to change the title of the regulation from "Morticians" to "Funeral Director." Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff's draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

April 28, 2015 Business Taxes Committee Meeting

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board's July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from "Morticians" to "Funeral Directors" and update all the references to "mortician" to refer to "funeral director" throughout the regulation. The change to the title of the regulation from "Morticians" to "Funeral Directors" was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation's current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term "funeral director," and the term "burial," which is used in the definition of "funeral director," in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to "cash advances," instead of "accommodation cash advances." The formal issue paper also recommended that the Board propose to include a definition for the term "cash advances" in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to "cash advances," renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new

paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director's invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, "[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for veterans." However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board proposed to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States "Veterans Administration" was renamed the "Department of Veterans Affairs" since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding "Government" to the end of the title of renumbered subdivision (c)(3), changing the references to the "United States" to "U.S." in renumbered subdivision (c)(3), and revising the remaining references to the "Veterans Administration" to refer to the "Department of Veterans Affairs" in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. §3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board propose to delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board's discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary to have the effect and accomplish the objective of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by

the burial service industry. The Board has performed an evaluation of whether the proposed amendments to Regulation 1505 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1505 is the only state regulation that provides specific guidance to morticians regarding the proper application of sales and use tax, and none of the proposed amendments conflict with Regulations 1610, 1614, and 1701 referred to above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1505 or the proposed amendments to Regulation 1505.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1505 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulation 1505 result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1505 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1505 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Monica Gonzalez Silva, Tax Counsel III, by telephone at (916) 323-3138, by e-mail at Monica.Silva@boe.ca.gov, or by mail at State Board of Equalization, Attn: Monica Gonzalez Silva, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on September 15, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1505 during the September 15-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1505. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1505 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1505, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1505 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1505, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.